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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BAXTER, JESSICA R

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/974,780

Applicant(s)

SCHALDACH ET AL.

Examiner

Jessica R Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004 and 09 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 30, 2004 has been entered.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-60 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,931,867 to Haindl.

Regarding claims 1 and 59, Haindl discloses a stent, for expansion from a first condition into an expanded second condition in which it holds a vessel in an expanded state (Column 1 lines 58-60), said stent comprising: a tubular body, a peripheral surface of which is formed by a plurality of support portions that extend in a longitudinal direction of the stent, the support portions comprising: a plurality of bar elements; and a plurality of connecting bars, extending rectilinearly in the longitudinal direction of the stent when in the first condition, that connect the bar elements; wherein the support portions form a plurality of support portion groups with at least a first support portion and a second support portion in adjacent relationship thereto in a peripheral direction of the stent, the bar elements of which extend in a meander configuration in the longitudinal direction of

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the stent, and wherein a first engagement point of the connecting bars engages the first support portion and a second engagement point of the connecting bars engages the second support portion, such that the first and second engagement points are spaced apart from each other in the longitudinal direction of the stent and the connecting bars are configured and arranged so the spacing in the longitudinal direction between the first and second engagement points decreases upon expansion of the stent (see attached FIGS 1 and 2 for details).

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First Condition

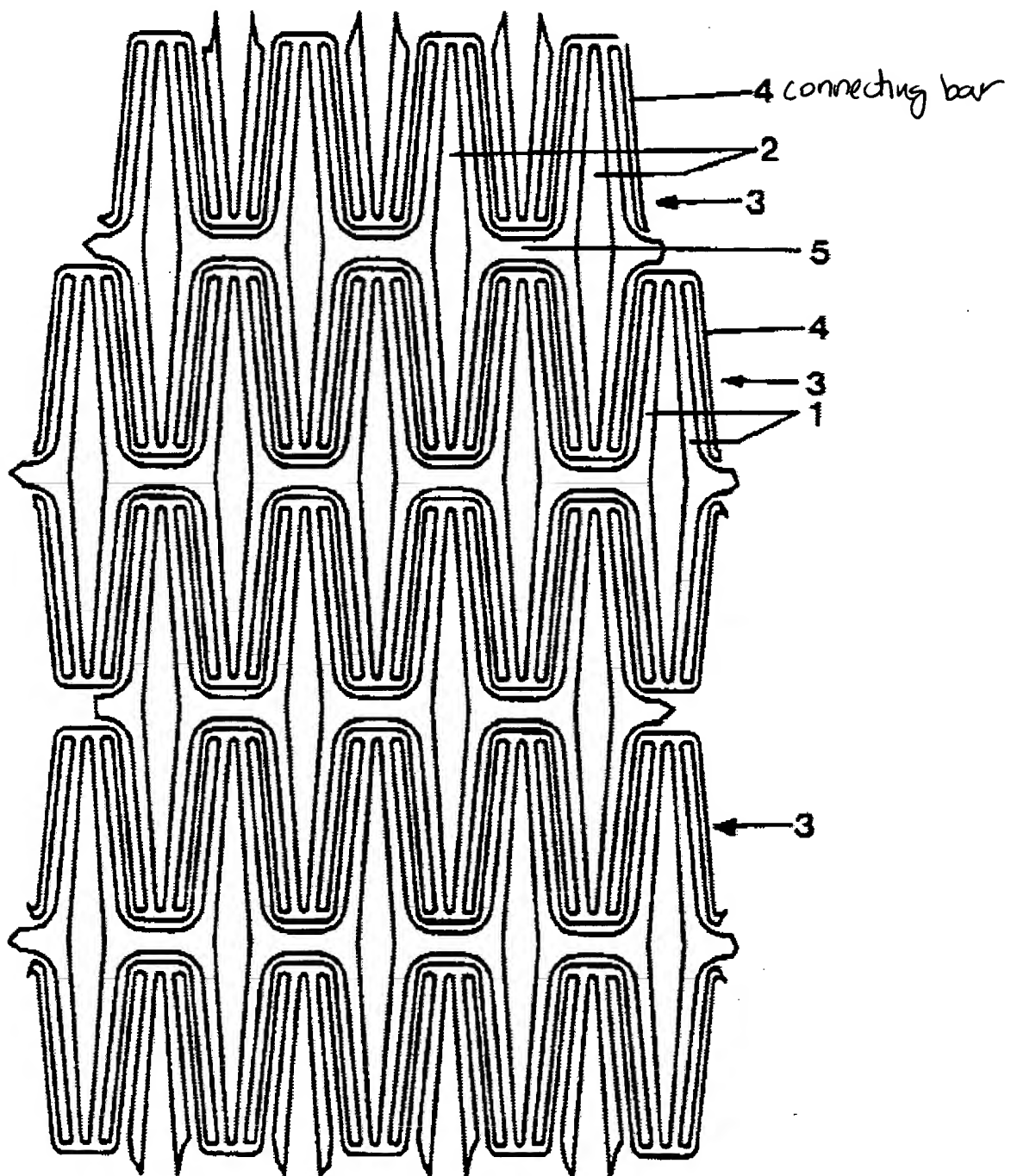
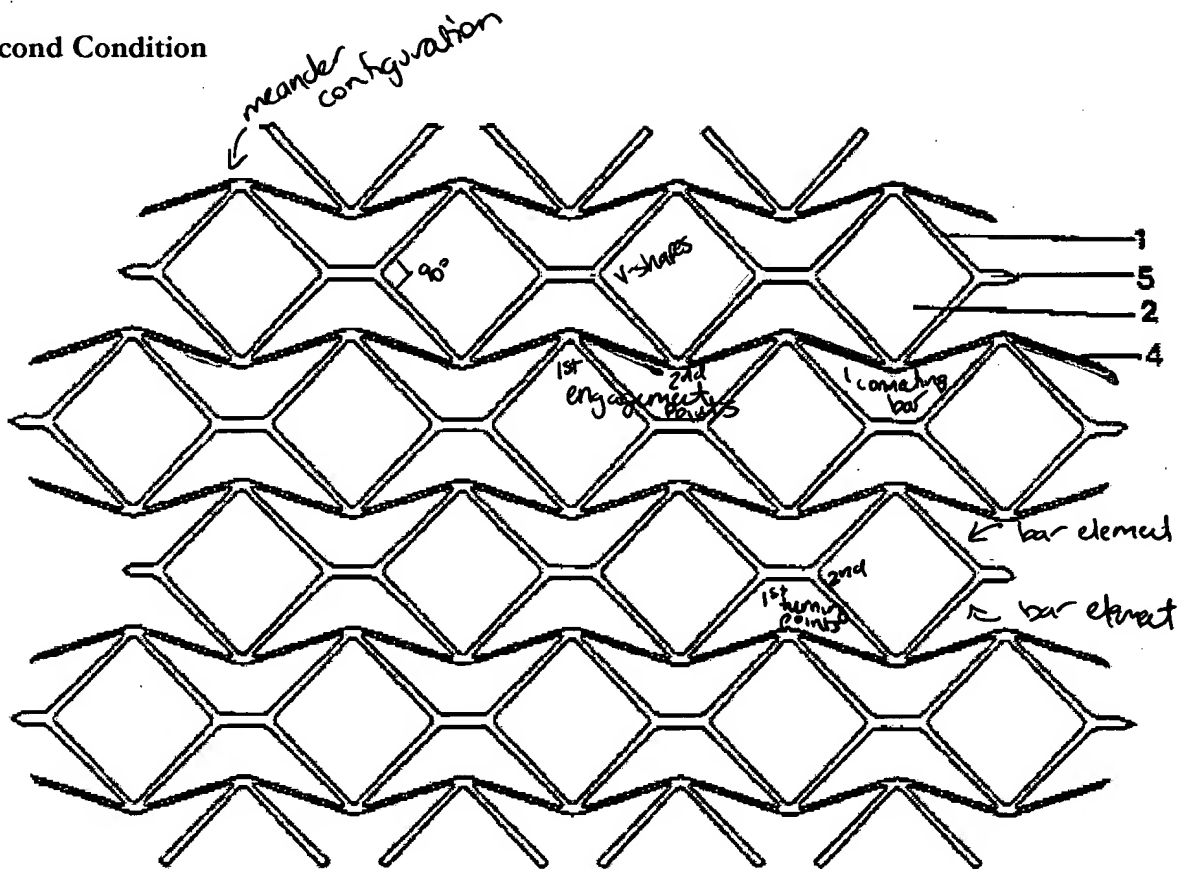


FIG.1

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**Second Condition****FIG. 2**

Regarding claim 2, Haindl discloses that at least the bar elements of a first support portion and of the two second support portions arranged in the peripheral direction of the stent at both sides of the first support portion extend in a meander configuration in the longitudinal direction of the stent and the first engagement points of the connecting bars engage the first support portion and the second engagement points of the connecting bars engage one of the two second support portions, wherein the first and second engagement points are spaced relative to each other in the longitudinal direction of the stent and the connecting bars are configured and arranged so that the spacing in the longitudinal direction of the stent changes between the first and second engagement

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points decreases upon expansion of the stent in the same manner. Compare attached FIGS. 1 and 2 connecting bars.

Regarding claims 3 and 5 Haindl discloses that at least the first engagement points of the connecting bars are located near a turning point of the bar element to which the connecting point is engaged (See FIG. 2).

Regarding claims 4 and 6, Haindl discloses that the second engagement points of the connecting bars are located near a turning point of the bar element to which the connecting point is engaged (see FIG. 2).

Regarding claims 7, 8, 9 and 10, Haindl discloses that the connecting bars are of a substantially straight configuration (See FIG. 2).

Regarding claims 11, 12, 13, 14 and 15, Haindl discloses that a connecting line between the first and second engagement points extends *substantially* in the longitudinal direction of the stent (see FIG. 2).

Regarding claims 16, 17, 18, 19, 20 and 21, Haindl discloses that at least one support portion is formed by bar elements extending in a meander configuration in the longitudinal direction of the stent, wherein the bar elements comprise two bar element portions that are adjacent in the longitudinal direction of the stent and which extend between a turning point to form the limbs of a V-shape (see FIG. 2).

Regarding claims 22, 24, 26, 28, 30 and 32, Haindl discloses that the bar element portions include an angle of between 80° and 100 °(see FIG.2).

Regarding claims 23, 25, 27, 29, 31 and 3, Haindl discloses that the bar element portions include an angle of 90°(see FIG. 2).

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Regarding claims 34, 35, 36, 37, 38, 39 and 40, Haindl discloses that the bar elements of the first and second support portions are of substantially the same periodic configuration and a length of the connecting bars is such that the adjacent bar elements in the first condition of the stent are displaced relative to each other by up to a quarter period in the longitudinal direction of the stent (see FIG. 1).

Regarding claims 41, 42, 43, 44, 45, 46, 47, 48 and 49, Haindl discloses that the bar elements of the first and second support portions are of substantially the same period configuration and a length of the connecting bars is such that in the second condition of the stent the adjacent bar elements extend substantially in phase with each other with respect to the longitudinal direction of the stent (see FIG. 2).

Regarding claims 50, 51, 52, 53, 54, 55, 56 and 57, Haindl discloses that the bar elements are designed to increase the flexibility of the stent (Column 2 lines 11-20).

Regarding claim 58, Haindl discloses that at least one support portion formed by a bar element, the direction of curvature of which changes in a central region between a pair of turning points (see FIG. 2).

### ***Response to Arguments***

4. Applicant's arguments filed January 30, 2004 have been fully considered but they are not persuasive.

5. Applicant argues that Haindl '867 does not disclose the bar elements extending in a longitudinal direction. However, the bar elements do extend in the longitudinal direction in a meander configuration (see attached figures, above). Applicant refers to elements 1 and 5 as the meander configuration of Haindl. However, as seen in the rejection above, elements 1 and 5 are not considered to be the meander configuration in the longitudinal direction.



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6. Applicant argues that Haindl does not show the connecting bars extending rectilinearly in the longitudinal direction. However, the connecting bars are considered to be extending rectilinearly in the longitudinal direction since the members 1 are described (in claim 1) as extending linearly in the longitudinal direction. Members 1 are parallel to the connecting bars (4), hence the connecting bars are considered to extend in the longitudinal direction. Thus, the rejection over Haindl '867 is proper.

### *Conclusion*

7. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 703-305-4069. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on 703-308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JRB

Jessica R Baxter  
Examiner  
Art Unit 3731

  
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